

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MIKE DUKE and PAULINE DUKE,	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. H-08-0955
	§	
BEST BUY STORES COMPANY,	§	
INC., <i>et al.</i> ,	§	
Defendants.	§	

MEMORANDUM AND ORDER

This case is before the Court on Defendants’ Motion to Designate Responsible Third Parties (“Motion”) [Doc. # 15]. Plaintiffs neither filed any opposition to the Motion nor requested additional time to do so. Having reviewed the record in this case and having applied relevant legal authorities, the Court **grants** Defendants’ Motion.

Plaintiff Mike Duke, an employee of Best Buy Stores, was injured when he was attacked in the parking lot of the store where he worked. Defendants seek to designate the two attackers, Ryan Hudnall and Derrick Henderson, as responsible third parties under Texas law. Defendants also seek to designate Rodney Hudnall as a responsible third party based on Plaintiffs’ allegation that Rodney Hudnall planned the attack.

In pertinent part, § 33.004 of the Texas Practice & Remedies Code provides that “[a] defendant may seek to designate a person as a responsible third party by filing a

motion for leave to designate that person as a responsible third party.” Under § 33.011(6), a “responsible third party” “means [in pertinent part] any person who is alleged to have caused or contributed to causing in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these.” *See Werner v. KPMG LLP*, 415 F. Supp. 2d 688, 702-03 (S.D. Tex. 2006); *Muniz v. Stanley*, 2007 WL 1100466 (S.D. Tex. Apr. 11, 2007); *Cortez v. Frank’s Casing Crew & Rental Tools*, 2007 WL 419371 (S.D. Tex. Feb. 2, 2007). If a person is held to be a responsible third party, then § 33.003 provides that the person is to be included in the list of parties the jury may consider for allocation of responsibility for the plaintiff’s damages. Pursuant to § 33.004(e), Plaintiffs then have sixty (60) days to move to join the designated responsible third parties as defendants in the lawsuit.


Plaintiffs have not opposed Defendants’ Motion, and it is clear from Plaintiffs’ allegations that the persons Defendants seek to designate have potential liability for Plaintiffs’ injuries. Plaintiffs allege that Rodney Hudnall planned the attack on Mike Duke and that Ryan Hudnall and Derrick Henderson carried out the attack.

Based on the foregoing, the Court concludes that § 33.004 applies and that Plaintiffs’ allegations indicate that Rodney Hudnall, Ryan Hudnall, and Derrick

Henderson have potential responsibility for Plaintiffs' injuries. Accordingly, it is hereby

ORDERED that Defendants' Motion to Designate Responsible Third Parties [Doc. # 15] is **GRANTED** and Defendants are granted leave to designate Rodney Hudnall, Ryan Hudnall, and Derrick Henderson as responsible third parties pursuant to § 33.004 of the Texas Civil Practice and Remedies Code.

SIGNED at Houston, Texas, this 30th day of **June, 2008**.



Nancy F. Atlas
United States District Judge